

Message Text

CONFIDENTIAL

PAGE 01 USBERL 00171 231647Z
ACTION EUR-12

INFO OCT-01 ISO-00 IO-13 NSC-05 DODE-00 CIAE-00 PM-05
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FM USMISSION USBERLIN
TO AMEMBASSY BONN
INFO SECSTATE WASHDC 6084
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L USBERLIN 0171

E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: STOBBE'S ROLE AS PRESIDENT OF THE BUNDESRAT

REF: (A) USBERLIN 144, (B) BONN 898, (C) USBERLIN 101, (D)
USBERLIN 0073, (E) BONN 302 - PARA 13), (F) USBERLIN 0026,
(G) 77 BONN 21415 - PARA 5

1. PARA 7 REFTTEL B REPORTS THAT FRG FOREIGN OFFICE WILL
RESEARCH SUBJECT MATTER TO ASCERTAIN SPECIFIC PROBLEM AREAS.
FOLLOWING IS ONE POINT WHICH US BONN GROUP REP MAY WISH TO
ASK FRG TO EXAMINE.

2. PARA 4 REFTTEL B REPORTS THAT PRESIDENT SCHEEL WHEN PHYSICALLY
IN BERLIN DOES NOT REPEAT NOT PERFORM OFFICIAL ACTS (E.G.
LIKE SIGNING FRG LEGISLATION); HOWEVER, FRG RESTRAINT IS SELF-
IMPOSED AND NOT IN FRG VIEW MANDATED BY THE QUADRIPARTITE
AGREEMENT OF 1971 (QA).

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 00171 231647Z

3. WE HAVE NO QUARREL WITH THIS FRG INTERPRETATION OF QA,
BUT ARE UNCERTAIN OF EFFECT OF FRG BASIC LAW (GRUNDGESETZ)
ON THIS QUESTION.

4. ARTICLE 57 OF BASIC LAW PROVIDES: "IF THE FEDERAL
PRESIDENT IS PREVENTED FROM ACTING, OR IF HIS OFFICE
FALLS PREMATURELY VACANT, HIS POWERS SHALL BE EXERCISED

BY THE PRESIDENT OF THE BUNDESRAT."

5. ACCORDING TO WAHT WE UNDERSTAND TO BE THE LEADING COMMENTARY ON THE BASIC LAW (MAUNZ-DUERIG-HERZOG), THIS PROVISION IS ENGAGED WHEN THE FEDERAL PRESIDENT TRAVELS ABROAD (AUSLANDSAUFENTHALT). THE COMMENTARY SAYS NOTHING ABOUT TRAVEL TO BERLIN, WHICH WE ASSUME, THE FRG WOULD CONSIDER CONSTITUTES TRAVEL WITHIN THE FRG.

6. WE BELIEVE IT WOULD BE USEFUL TO KNOW EXACTLY UNDER WHAT CONDITIONS THE BUNDESRAT PRESIDENT IS ASKED TO SERVE AS ACTING PRESIDENT, AND, IN PARTICULAR, WHETHER HE EVER HAS SERVED AS ACTING PRESIDENT WHEN THE FEDERAL PRESIDENT WAS IN BERLIN.

7. ONCE STOBBE BECOMES BUNDESRAT PRESIDENT, THE PRESS IS CERTAIN TO EXPLAIN IN DETAIL THE CIRCUMSTANCES UNDER WHICH STOBBE WOULD BECOME ACTING PRESIDENT. IF THE SOVIETS NOTE, AS THEY SHOULD, THAT THE FEDERAL PRESIDENT'S ABSENCE FROM THE FRG IS ONE SUCH CRITERION, IT WOULD BE NATURAL FOR THEM TO ARGUE THAT:

(A) BERLIN IS NOT PART OF THE FRG,

(B) IF THE FEDERAL PRESIDENT WERE IN BERLIN, IT WOULD BE NECESSARY FOR THE BUNDESRAT PRESIDENT TO SERVE AS ACTING PRESIDENT,
CONFIDENTIAL

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PAGE 03 USBERL 00171 231647Z

AND (C) STOBBE, AS BUNDESRAT PRESIDENT, CANNOT SERVE AS ACTING PRESIDENT WHILE HE IS PHYSICALLY IN BERLIN, SINCE THE FEDERAL PRESIDENT COULD NOT PERFORM THE FUNCTIONS OF THE OFFICE WERE HE IN BERLIN. GEORGE

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